

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 15, 2011

In the Matter of AUSTIN, Minors.

No. 304648
Gratiot Circuit Court
Family Division
LC No. 10-007590-NA

Before: TALBOT, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

M. Austin and L. Austin appeal the trial court's order removing their three minor children from the family home following a determination that to permit the children to remain in the parental home was contrary to their welfare. We affirm.

In September of 2010, a petition was filed alleging that the Austins abused and/or neglected their six adopted children. All six minor children were removed from the Austins' home and placed with the Department of Human Services ("DHS"). On March 7, 2011, the Austins agreed to enter pleas of admission and no contest to the allegations of abuse and neglect and to release all paternal rights to the three oldest children. In return, the request to terminate the Austins' parental rights to the three youngest children was dismissed, and those children were returned to the Austins' home under the supervision of DHS.

On March 16, 2011, a dispositional hearing was held and the Austins were ordered to comply with a case service plan. On May 27, 2011, an ex parte motion for out-of-home placement was filed by DHS and supported by the affidavit of the children's therapist, Tracy Crawford. The affidavit indicated that all three children presented with symptoms of post-traumatic stress and adjustment disorders, with mixed anxiety and depressed mood. Crawford also indicated that she diagnosed all three children with developmental trauma disorder. She further indicated that while the three younger children were residing outside of the family home, they made progress in their individual therapies; however, they significantly regressed after returning to the parental home. Crawford was extremely concerned for the mental and emotional health of the minor children if they remained in the Austins' home.

On May 28, 2011, a contested removal hearing was held and the court found that it was contrary to the welfare of the three children to remain in the Austins' home. In making its decision, the trial court indicated that it gave substantial weight to the testimony of Crawford as

the children's therapist. The court summarized Crawford's testimony and concerns regarding the minor children's regression on their return to the Austin home. The court indicated it was also persuaded by the guardian ad litem for the minor children who is an experienced attorney in such matters. The trial court observed that the Austins still appeared hesitant to admit that they did anything wrong in their treatment of the three oldest children. While the testimony of the Austins' witnesses Bridget Vermeesch and Ronda Sorensen was acknowledged by the trial court, it discounted such testimony noting that "they are not therapist [sic]."

On appeal, the Austins argue that the trial court erred by failing to provide the requisite findings of fact to support its determination that continued placement in the home was contrary to the welfare of the minor children.¹ We disagree. The proper interpretation and application of statutes and court rules is a legal question, which this Court reviews de novo.² This Court reviews a trial court's findings of fact for clear error.³ A finding is clearly erroneous if, "although evidence exists to support [it], [the reviewing court is] left with the definite and firm conviction that a mistake has been made."⁴

"If continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the child be placed in the most family-like setting available consistent with the child's needs."⁵ If the court orders placement:

[T]he court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home and the reasons supporting that finding. If the "contrary to the welfare of the child" finding is placed on the record and not in a written statement of findings, it must be capable of being transcribed. The findings may be made on the basis of hearsay evidence that possesses adequate indicia of trustworthiness.⁶

The trial court indicated at the removal hearing that it agreed with the position of Crawford and the minor children's guardian ad litem favoring removal. The written order following the contested removal hearing indicates that permitting the three minor children to remain in the family home would be contrary to their welfare. The order also states that the findings were based on a review of the ex parte motion for out-of-home placement, and the

¹ MCR 3.965(C)(3), (D)(1).

² *Henry v Dow Chemical Co*, 484 Mich 483, 495; 772 NW2d 301 (2009).

³ *In re Conley*, 216 Mich App 41, 42-43; 549 NW2d 353 (1996).

⁴ *Id.*

⁵ MCR 3.965(C)(2).

⁶ MCR 3.965(C)(3).

affidavit testimony of Crawford. We find that this explanation is sufficient for compliance with the court rule.⁷

The Austins also argue that the trial court erred by failing to explain how reasonable efforts were made to maintain in-home placement.⁸ When a court has placed a child outside of the family home, it must also determine “whether reasonable efforts to prevent the removal of the child [were] made or that reasonable efforts to prevent removal [were] not required.”⁹ This determination must be made by the court “at the earliest possible time, but no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order.”¹⁰ Contrary to the assertion of the Austins, the court rule does not require that the trial court explain how the Austins either failed to substantially comply with or benefit from the services provided.

The trial court’s order states that reasonable efforts were made to prevent the removal of the minor children from the Austins’ home. The order also appropriately contains the factual basis for the determination, which included the provision by DHS of services encompassing “counseling, parenting classes and advanced impact.” When a trial court makes findings of fact, “[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.”¹¹ In this instance, the court complied with the applicable court rule¹² in finding that reasonable efforts had been made to maintain the children’s in-home placement.

Next, the Austins argue that the trial court’s finding that the minor children remaining in the family home was contrary to their welfare was clearly erroneous as it was against the great weight of the evidence. We disagree. “The great weight standard of review allows a meaningful yet deferential review” by this Court.¹³ A trial court’s findings should be affirmed “unless the evidence ‘clearly preponderates in the opposite direction.’”¹⁴

The trial court decided that the minor children remaining in the family home was contrary to their welfare after reviewing the ex parte motion and Crawford’s affidavit, as well as hearing the testimony of all witnesses. The trial court admittedly gave substantial weight to Crawford’s testimony, who is a licensed counselor, which differentiated her from the other witnesses. Crawford also had worked with the minor children over a period of time and was the only

⁷ *Id.*

⁸ MCR 3.965(D)(1).

⁹ *Id.*

¹⁰ *Id.*

¹¹ MCR 2.517(A)(2).

¹² MCR 3.965(C)(3), (D)(1).

¹³ *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994).

¹⁴ *Id.* at 879 (citation omitted).

witness with experience working with the children without the Austins being present and possibly influencing the children's behavior and responses. The Austins contend that there was no demonstrated risk of harm or inappropriate behavior by the Austins since the children had been returned to their home. The Austins also cite to their cooperation and participation in the case service plan and demonstrated receipt of benefit from their participation in services. The decision by the trial court was based on the credibility of the witnesses and the welfare of the minor children. The Austins' compliance with the case service plan was not at issue. "[R]esponsibility to determine the credibility and weight of the testimony" is for the finder of fact.¹⁵ As such, the trial court's finding that the minor children remaining in the family home was contrary to their welfare was not against the great weight of the evidence.

Finally, the Austins argue that the trial court erred by failing to comply with the applicable court rule requiring they be provided an opportunity to state why their children should not be removed from their home.¹⁶ We disagree. Whether the trial court properly interpreted and applied the applicable court rule is reviewed de novo.¹⁷

At an emergency removal hearing, "the parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent, guardian, or legal custodian."¹⁸ The Austins were present at the removal hearing, were represented by counsel, were called as witnesses and were subject to direct examination by their counsel. A closing argument was also made on the Austins' behalf by their attorney. We recognize that "[a]n attorney speaks for his client."¹⁹ Accordingly, the Austins had ample opportunity to state why the three minor children should not be removed from their home.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

¹⁵ *Bachman v Swan Harbour Ass'n*, 252 Mich App 400, 430; 653 NW2d 415 (2002).

¹⁶ MCR 3.974(B)(3)(b).

¹⁷ *Henry*, 484 Mich at 495.

¹⁸ MCR 3.974(B)(3)(b).

¹⁹ *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280, 302; 731 NW2d 29 (2007).